

NOT FOR CITATION

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CHARLES VANCE JOHNSON, ) No. C 10-03706 JF (PR)  
Petitioner, ) ORDER TO SHOW CAUSE  
vs. )  
RANDY GROUNDS, Warden, )  
Respondent. )

Petitioner, a state prisoner at the Correctional Training Facility in Soledad, California, proceeding pro se, seeks a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging the decision of the Board of Parole Hearings (“Board”) finding him unsuitable for parole. Petitioner has paid the filing fee. The Court orders Respondent to show cause why the petition should not be granted.

## STATEMENT

According to the petition, Petitioner was sentenced in 1985 to a term of twenty-years-to-life in state prison after a jury found him guilty of second degree murder and assault with a deadly weapon in Kern County Superior Court. Petitioner challenges the Board's decision denying him parole after a fifth parole suitability hearing on December

1 8, 2008. Petitioner filed habeas petitions in the state superior court, state appellate court,  
2 and the state supreme court, all of which were denied as of July 2010. Petitioner filed the  
3 instant federal petition on August 20, 2010.

4

## 5 DISCUSSION

6 **A. Standard of Review**

7 This Court may entertain a petition for writ of habeas corpus “in behalf of a person  
8 in custody pursuant to the judgment of a state court only on the ground that he is in  
9 custody in violation of the Constitution or laws or treaties of the United States.” 28  
10 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975).

11 A district court shall “award the writ or issue an order directing the respondent to  
12 show cause why the writ should not be granted, unless it appears from the application that  
13 the applicant or person detained is not entitled thereto.” 28 U.S.C. § 2243.

14 **B. Petitioner’s Claims**

15 As grounds for federal habeas relief, Petitioner claims that “there is no evidence to  
16 support the [Board’s] ultimate conclusion that [P]etitioner poses a current threat to public  
17 safety.” (Pet. at 7.) Petitioner alleges that the Board’s decision violates due process.  
18 Liberally construed, Petitioner’s claims are cognizable under § 2254. The Court orders  
19 Respondent to show cause why the petition should not be granted.

20

## 21 CONCLUSION

22 1. The Clerk shall serve by mail a copy of this order and the petition  
23 and all attachments thereto upon the Respondent and the Respondent’s attorney, the  
24 Attorney General of the State of California. The Clerk shall also serve a copy of this  
25 order on the Petitioner.

26 2. Respondent shall file with the Court and serve on Petitioner, **within sixty**  
27 **(60) days** of the date this order is filed, an answer conforming in all respects to Rule 5 of  
28 the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus

1 should not be granted. Respondent shall file with the answer and serve on Petitioner a  
2 copy of all portions of the state parole record that have been transcribed previously and  
3 that are relevant to a determination of the issues presented by the petition.

4 If Petitioner wishes to respond to the answer, he shall do so by filing a traverse  
5 with the Court and serving it on Respondent **within thirty (30) days** of his receipt of the  
6 answer.

7 3. Respondent may file a motion to dismiss on procedural grounds in lieu of  
8 an answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules  
9 Governing Section 2254 Cases. If Respondent files such a motion, Petitioner shall file  
10 with the Court and serve on Respondent an opposition or statement of non-opposition  
11 **within thirty (30) days** of receipt of the motion, and Respondent shall file with the court  
12 and serve on Petitioner a reply **within fifteen (15) days** of receipt of any opposition.

13 4. It is Petitioner's responsibility to prosecute this case. Petitioner is reminded  
14 that all communications with the Court must be served on respondent by mailing a true  
15 copy of the document to Respondent's counsel. Petitioner must keep the Court and all  
16 parties informed of any change of address by filing a separate paper captioned "Notice of  
17 Change of Address." He must comply with the Court's orders in a timely fashion.  
18 Failure to do so may result in the dismissal of this action for failure to prosecute pursuant  
19 to Federal Rule of Civil Procedure 41(b).

20 IT IS SO ORDERED.

21 DATED: 1/18/11



22 JEREMY FOGEL  
23 United States District Judge  
24  
25  
26  
27  
28

UNITED STATES DISTRICT COURT  
FOR THE  
NORTHERN DISTRICT OF CALIFORNIA

CHARLES VANCE JOHNSON,

Case Number: CV10-03706 JF

Petitioner,

**CERTIFICATE OF SERVICE**

v.

RANDY GROUNDS, Warden,

Respondent.

/

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on 1/31/11, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Charles Vance Johnson D-05007  
Correctional Training Facility  
P.O. Box 689  
B-328  
Soledad, CA 93960-0689

Dated: 1/31/11

Richard W. Wieking, Clerk